

nearly correct as the available information will permit, its accuracy cannot be guaranteed, and, consequently, all such estimates are subject to revision, if necessary, as the work proceeds and the field conditions are more fully developed. Any deposit in excess of actual cost will be returned to the applicants as provided by law, but in cases where the cost exceeds the deposit made in accordance with the estimate, an additional deposit will be required, failing which, operations will be suspended.

(c) In the application of the terms of this Act it is not intended that there shall be undertaken any work involving the mere reestablishment of lost or obliterated or misplaced corners in a limited area of a township, such work being within the province of the local surveyor, and the authority of the State Director will be restricted to the giving of advice in accordance with the circular for the restoration of lost or obliterated corners. Employees of the Government are prohibited from participating in the resurvey of a township or the reestablishment of lost corners or in the subdivision of sections for private parties, even if the expense is borne by the county or State authorities or by individuals, except as such action is specifically authorized by the Director, Bureau of Land Management, in accordance with the provisions of existing statutes.

(d) Deposit required: The deposit required of the petitioners by law must accompany the application and must be made in the amount, at the place and in the manner prescribed by the instructions which will accompany the estimate.

#### § 9185.4-2 Showing required.

(a) *Necessity.* The applicants for the resurvey of any township are required to present satisfactory prima facie evidence of the necessity for such action. In general, it must be shown that the evidences of the original survey are so widely obliterated or that the prevailing survey conditions are so grossly defective as to preclude the satisfactory identification of the subdivisions of the subsisting survey or that the evidences of the original survey are in such an advanced state of deterioration that

action looking to their preservation and perpetuation is expedient as in the public interest.

(b) *Ownership of land.* The applicants for resurvey are required to preface their petition by the statement that the extent of privately owned lands within the township is in excess of 50 percent of the total area thereof. If necessary, information in this connection may be obtained by the petitioners from the manager of the land office having local jurisdiction. Failure to comply with the condition set forth in this section or material error in the showing made, will not only result in delaying action upon the petition, but may require its rejection if it is found that the township is not properly subject to resurvey under the terms of the governing Act.

#### § 9185.4-3 Three-fourths of land owners.

The owners of three-fourths of the privately owned lands within the township are required to join in the application, and all petitioners in whom ownership is vested, either individuals, the State, or corporations such as railroad companies whose interests are involved, are further required to supply, following their respective signatures, an accurate description by legal subdivision, section, township, and range of the lands to which title is claimed. Moreover, it must appear that notice of the proposed resurvey has been served upon all owners who have for any reason failed to join in the petition, and, in addition, it is highly desirable that all record entrymen who, under the terms of the act are not required to become parties to the petition, be similarly informed to the end that their objections, if any, may be heard and subsequent protest based upon the plea of ignorance may, insofar as possible, be avoided.

### Group 9200—Protection

#### PART 9210—FIRE MANAGEMENT

##### Subpart 9212—Wildfire Prevention

Sec.  
9212.0-1 Purpose.  
9212.0-2 Objective.  
9212.0-3 Authority.

## Bureau of Land Management, Interior

## § 9212.2

9212.0-5 Definitions.

9212.0-6 Policy.

9212.1 Prohibited acts.

9212.2 Fire prevention orders.

9212.3 Permits.

9212.4 Penalties.

AUTHORITY: 43 U.S.C. 1701 *et seq.*

SOURCE: 46 FR 42828, Aug. 24, 1981, unless otherwise noted.

### Subpart 9212—Wildfire Prevention

#### § 9212.0-1 Purpose.

The purpose of this subpart is to set forth procedures to prevent wildfires on the public lands.

#### § 9212.0-2 Objective.

The objective of this subpart is to prevent wildfires on the public lands.

#### § 9212.0-3 Authority.

This subpart is issued under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*).

#### § 9212.0-5 Definitions.

As used in this subpart, the term:

(a) *Person* means individuals, corporations, companies, associations, firms, partnerships, societies or joint stock companies.

(b) *Authorized officer* means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this subpart.

(c) *Public lands* means any lands and interest in lands owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except:

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts, and Eskimos.

(d) *Fire* means the burning of timber, trees, slash, brush, tundra, grass or other flammable material such as, but not limited to, petroleum products, trash, rubbish, lumber, paper, cloth or agricultural refuse occurring out of doors and includes *campfire* as defined in this section.

(e) *Campfire* means a controlled fire occurring out of doors used for cooking, branding, personal warmth, lighting, ceremonial or esthetic purposes.

(f) *Permit* means authorization in writing by the authorized officer.

(g) *Closed area* means public lands closed to entry by a Bureau of Land Management fire prevention order.

(h) *Wildlife* means any wildland fire that requires a suppression response.

(i) *Restricted area* means public lands restricted as to use(s) by a Bureau of Land Management fire prevention order.

#### § 9212.0-6 Policy.

It is the policy of the Bureau of Land Management to take all necessary actions to protect human life, the public lands and the resources and improvements thereon through the prevention of wildfires. Wherever possible, the Bureau of Land Management's actions will complement and support State and local wildfire prevention actions.

#### § 9212.1 Prohibited acts.

Unless permitted in writing by the authorized officer, it is prohibited on the public lands to:

(a) Cause a fire, other than a campfire, or the industrial flaring of gas, to be ignited by any source;

(b) Fire a tracer or incendiary device;

(c) Burn, timber, trees, slash, brush, tundra or grass except as used in campfires;

(d) Leave a fire without extinguishing it, except to report it if it has spread beyond control;

(e) Build, attend, maintain or use a campfire without removing all flammable material from around the campfire adequate to prevent its escape;

(f) Resist or interfere with the efforts of firefighter(s) to extinguish a fire;

(g) Enter an area which is closed by a fire prevention order, or

(h) perform any act restricted by a fire prevention order.

#### § 9212.2 Fire prevention orders.

(a) To prevent wildfire or facilitate its suppression, an authorized officer may issue fire prevention orders that close entry to, or restrict uses of, designated public lands.

(b) Each fire prevention order shall:

### § 9212.3

- (1) Identify the public lands, roads, trails or waterways that are closed to entry or restricted as to use;
- (2) Specify the time during which the closure or restriction shall apply;
- (3) Identify those persons who, without a written permit, are exempt from the closure or restrictions;
- (4) Be posted in the local Bureau of Land Management office having jurisdiction over the lands to which the order applies; and
- (5) Be posted at places near the closed or restricted area where it can be readily seen.

#### § 9212.3 Permits.

- (a) Permits may be issued to enter and use public lands designated in fire prevention orders when the authorized officer determines that the permitted activities will not conflict with the purpose of the order.
- (b) Each permit shall specify:
  - (1) The public lands, roads, trails or waterways where entry or use is permitted;
  - (2) The person(s) to whom the permit applies;
  - (3) Activities that are permitted in the closed area;
  - (4) Fire prevention requirements with which the permittee shall comply; and
  - (5) An expiration date.
- (c) An authorized officer may cancel a permit at any time.

#### § 9212.4 Penalties.

Any person who knowingly and willfully violates the regulations at § 9212.1 of this title shall, upon conviction, be subject to a fine of not more than \$1,000 or to imprisonment of not more than 12 months, or both.

## PART 9230—TRESPASS

### Subpart 9239—Kinds of Trespass

Sec.

- 9239.0-3 Authority.  
9239.0-7 Penalty for unauthorized removal of material.  
9239.0-8 Measure of damage.  
9239.0-9 Sale, lease, permit, or license to trespassers.  
9239.1 Timber and other vegetative resources.  
9239.1-1 Unauthorized cutting, removal, or injury.  
9239.1-2 Penalty for trespass.

### 43 CFR Ch. II (10-1-97 Edition)

- 9239.1-3 Measure of damages.  
9239.2 Unlawful enclosures or occupancy.  
9239.2-1 Enclosures of public lands in specified cases declared unlawful.  
9239.2-2 Duty of district attorney.  
9239.2-3 Responsibility for execution of law.  
9239.2-4 Filing of charges or complaints.  
9239.2-5 Settlement and free passage over public lands not to be obstructed.  
9239.3 Grazing, Alaska.  
9239.5 Minerals.  
9239.5-1 Ores.  
9239.5-2 Oil.  
9239.5-3 Coal.  
9239.6 Materials.  
9239.6-1 Turpentine.  
9239.7 Right-of-way.  
9239.7-1 Public lands.

AUTHORITY: R.S. 2478; 43 U.S.C. 1201; 43 U.S.C. 1701, *et seq.*; 18 U.S.C. 1851-1858.

SOURCE: 35 FR 9800, June 13, 1970, unless otherwise noted.

### Subpart 9239—Kinds of Trespass

#### § 9239.0-3 Authority.

- (a) Sections 9239.0-3 to 9239.7 are issued under the authority of R.S. 2478; 43 U.S.C. 1201.
- (b) In addition to liability for trespass on the public lands, as indicated in this part, persons responsible for such trespass may be prosecuted criminally under any applicable Federal law. Penalties are prescribed by the following statutes:
  - (1) Timber trespass. 18 U.S.C. 1852, 1853.
  - (2) Turpentine trespass. 18 U.S.C. 1854.
  - (3) Coal trespass. 18 U.S.C. 1851; 30 U.S.C. 201(b)(4).

[35 FR 9800, June 13, 1970, as amended at 42 FR 4460, Jan. 25, 1977]

#### § 9239.0-7 Penalty for unauthorized removal of material.

The extraction, severance, injury, or removal of timber or other vegetative resources or mineral materials from public lands under the jurisdiction of the Department of the Interior, except when authorized by law and the regulations of the Department, is an act of trespass. Trespassers will be liable in damages to the United States, and will be subject to prosecution for such unlawful acts.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991]

**§ 9239.0-8 Measure of damage.**

The rule of damages to be applied in cases of timber or other vegetative resources, coal, oil, and other trespass in accordance with the decision of the Supreme Court of the United States in the case of *Mason et al. v. United States* (260 U.S. 545, 67 L. ed. 396), will be the measure of damages prescribed by the laws of the State in which the trespass is committed, unless by Federal law a different rule is prescribed or authorized.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991]

**§ 9239.0-9 Sale, lease, permit, or license to trespassers.**

(a) For the purpose of this section, a trespasser is any person, partnership, association, or corporation responsible for the unlawful use of, or injury to, property of the United States.

(b) The authorized officer may refuse to sell to a trespasser timber or materials, or to issue to him a lease, permit, or license if, after a demand for payment has been served by certified or registered mail on the trespasser, a satisfactory arrangement for payment of the debt due the United States has not been made within reasonable time, and there is reason for the authorized officer to believe payment will not be made. Satisfactory arrangement shall be deemed to have been made by:

(1) Payment by the trespasser of the amount found to be due by the authorized officer, by a final judgment of a court, or pursuant to a compromise settlement accepted by the United States; or

(2) Execution by the trespasser of a promissory note or installment agreement, satisfactory to the authorized officer, so long as the agreed-upon payments are made on schedule; or

(3) Delivery by the trespasser of a bond guaranteeing payment to the United States of the amount found to be due by the authorized officer or by a court of competent jurisdiction; or

(4) Cancellation of the debt due the United States by a discharge in bankruptcy.

(c) Notwithstanding the provisions of paragraph (b) of this section, the authorized officer may sell to a trespasser

timber or materials or issue to him a lease, permit, or license for materials despite lack of a satisfactory arrangement for payment if such officer establishes in writing that:

(1) There is no other qualified bidder or no other qualified bidder will meet the high bid, and

(2) The sale, lease, permit, or license to the trespasser is necessary to protect substantial interests of the United States either by preventing deterioration of, or damage to, resources of the United States or by accepting an advantageous offer, and

(3) The timber management or other resource management program of the United States will not be adversely affected by the action.

**§ 9239.1 Timber and other vegetative resources.****§ 9239.1-1 Unauthorized cutting, removal, or injury.**

(a) All of the definitions in § 5400.0-5 of this title apply to this section.

(b) Commission of any of the acts listed in §§ 5462.2 and 5511.4 of this title constitutes a trespass.

[56 FR 10176, Mar. 11, 1991, as amended at 60 FR 50451, Sept. 29, 1995]

**§ 9239.1-2 Penalty for trespass.**

(a) In accordance with §§ 9239.0-7, 9239.0-8, and 9239.1-1 of this subpart, anyone responsible for a trespass act is liable to the United States in a civil action for damages and may be prosecuted under criminal law as provided in § 9265.6 of this chapter.

(b) The cutting of timber from the public land in Alaska, other than in accordance with the terms of the law and §§ 5511.2 to 5511.2-6 of this chapter will render the persons responsible liable to the United States in a civil action for trespass and such persons may be prosecuted criminally under title 18 U.S.C., or under State law.

[35 FR 9800, June 13, 1970, as amended at 56 FR 10176, Mar. 11, 1991; 60 FR 50451, Sept. 29, 1995]

**§ 9239.1-3 Measure of damages.**

(a) Unless State law provides stricter penalties, in which case the State law shall prevail, the following minimum

damages apply to trespass of timber and other vegetative resources:

(1) Administrative costs incurred by the United States as a consequence of the trespass.

(2) Costs associated with the rehabilitation and stabilization of any resources damaged as a result of the trespass.

(3) Twice the fair market value of the resource at the time of the trespass when the violation was nonwillful, and 3 times the fair market value at the time of the trespass when the violation was willful.

(4) In the case of a purchase from a trespasser, if the purchaser has no knowledge of the trespass, but should have had such knowledge through reasonable diligence, the value at the time of the purchase.

(b) The provisions of paragraph (a) of this section shall not be deemed to limit the measure of damages that may be determined under State law.

[56 FR 10176, Mar. 11, 1991, as amended at 60 FR 50451, Sept. 29, 1995]

### **§ 9239.2 Unlawful enclosures or occupancy.**

#### **§ 9239.2-1 Enclosures of public lands in specified cases declared unlawful.**

(a) Section 1 of the Act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1061), declares any enclosure of public lands made or maintained by any party, association, or corporation who “had no claim or color of title made or acquired in good faith, or an asserted right thereto, by or under claim, made in good faith with a view to entry thereof at the proper land office under the general laws of the United States at the time any such enclosure was or shall be made” to be unlawful and prohibits the maintenance of erection thereof.

(b) Section 4 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1271; 43 U.S.C. 3150) provides:

Fences \* \* \* and other improvements necessary to the care and management of the permitted livestock may be constructed on the public lands within such grazing districts under permit issued by the authority of the Secretary, or under such cooperative arrangement as the Secretary may approve.

(c) Section 10, paragraph (4) of the Federal Range Code, § 4112.3 of this chapter, containing rules for the administration of grazing districts prohibits “Constructing or maintaining any kind of improvements, structures, fences, or enclosures on the Federal range, including stock driveways, without authority of law or a permit.”

(d) Section 2 of the Taylor Grazing Act of June 28, 1934 (48 Stat. 1270; 43 U.S.C. 315a), provides that “any willful violation of the provisions of this act” or of “rules and regulations thereunder after actual notice thereof shall be punishable by a fine of not more than \$500.”

(e) Violations of any of the provisions of the Act of February 25, 1885, constitute a misdemeanor (Sec. 4, 23 Stat. 322; 35 Stat. 40; 43 U.S.C. 1064).

#### **§ 9239.2-2 Duty of district attorney.**

Section 2 of the Act of February 25, 1885 (23 Stat. 321; 43 U.S.C. 1062, 28 U.S.C. 41, Par. 21), provides that it shall be the duty of the district attorney of the United States for the proper district on affidavit filed with him by any citizen of the United States that such unlawful enclosure is being made or maintained, showing the description of the lands enclosed with reasonable certainty so that the enclosure may be identified, to institute a civil suit in the proper United States district or circuit court or territorial district court in the name of the United States and against the parties named or described who shall be in charge of or controlling the enclosure complained of.

#### **§ 9239.2-3 Responsibility for execution of law.**

The execution of this law devolves primarily upon the officers of the Department of Justice, but as it is the purpose to free the public lands from unlawful enclosures and obstructions, it is deemed incumbent upon the officers of the Department of the Interior to furnish the officers of the Department of Justice with the evidence necessary to a successful prosecution of the law.

**§ 9239.2-4 Filing of charges or complaints.**

All charges or complaints against unlawful enclosures or obstructions upon the public lands should be filed with the proper State Director. Such charges or complaints, when possible, should give the name and address of the party or parties making or maintaining such enclosure or obstruction and should describe the land enclosed in such a way that it may be readily identified. The section, township, and range numbers should be given, if possible.

**§ 9239.2-5 Settlement and free passage over public lands not to be obstructed.**

Section 3 of the Act of February 25, 1885 (23 Stat. 322; 43 U.S.C. 1063), provides that no person by force, threats, intimidation, or by any fencing or enclosing or any other unlawful means shall prevent or obstruct or shall combine or confederate with others to prevent or obstruct any person from peaceably entering upon or establishing a settlement or residence upon any tract of public land subject to settlement or entry under the public land laws of the United States or shall prevent or obstruct free passage or transit over or through the public lands.

**§ 9239.3 Grazing, Alaska.**

(a) *Reindeer.* (1) Any use of the Federal lands for reindeer grazing purposes, unless authorized by a valid permit issued in accordance with the regulations in subpart 4132 of this chapter, is unlawful and is prohibited.

(2) Any person who willfully violates any of the rules and regulations in subpart 4132 of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punishable by imprisonment for not more than one year, or by a fine of not more than \$500.

(b) *Livestock.* (1) Grazing livestock upon, allowing livestock to drift and graze on, or driving livestock across lands that are subject to lease or permit under the provisions of this part or within a stock driveway, without a lease or other authorization from the Bureau of Land Management, is prohibited and constitutes trespass. Trespass-

ers will be liable in damages to the United States for the forage consumed and for injury to Federal property, and may be subject to civil and criminal prosecution for such unlawful acts. A lessee who grazes livestock in violation of the terms and conditions of his lease by exceeding numbers specified, or by allowing the livestock to be on Federal land in an area or at a time different from that designated in his lease shall be in default and shall be subject to the provisions of § 4131.2-7 (g) and (h) of this chapter. Under section 2 of the Act, any person who willfully grazes livestock on public lands without authority, shall, upon conviction, be punished by a fine of not more than \$500.

(2) Whenever it appears that a violation exists the authorized officer shall serve written notice upon the alleged violator. The notice shall set forth the act or omission constituting such violation and will allow the party involved a reasonable specified time from receipt of notice to demonstrate that there has been no violation or that he has since achieved compliance. If the showing is satisfactory to the authorized officer he will close the case. If satisfactory showing is not made within the time allowed, the violation alleged in the notice will be deemed to have been willful.

(3) Where the owner of the trespassing livestock, or his representative, is known, the authorized officer shall determine the amount of the damage to the public land and other property of the United States and shall make a demand for payment upon the alleged violator setting forth the foregoing values including the value of the forage consumed. Such forage value shall be computed at the commercial rates, if susceptible to proof by reasonably available and reliable data; otherwise, a minimum charge of \$2 per animal unit month for trespass not clearly willful will be made. Where the trespasses are repeated and/or willful, a minimum charge of \$4 per animal unit month for forage consumed will be charged. All offers for settlement for value of forage consumed and for damage to the public land or to other property of the United States resulting from an alleged violation of any provision of the act or regulations found